

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on April 9, 2001 at 1:30 P.M., in Room 317 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Lorents Grosfield (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Bill Tash (R)
Sen. Mike Taylor (R)

Members Excused: Sen. Dale Mahlum, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Ken Toole (D)

Members Absent: None.

Staff Present: Nancy Bleck, Committee Secretary
Larry Mitchell, Legislative Branch
Mary Vandebosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Executive Action: HB 420; HB 69
Discussion: HB 513; HB 421

EXECUTIVE ACTION ON HB 420

Motion: SEN. LORENTS GROSFIELD moved that **AMENDMENTS TO HB 420, (HB042001.AMV), EXHIBIT(nas80a01), BE ADOPTED.**

Discussion: SEN. GROSFIELD stated these amendments responded to some of the issues that came up during the hearing and mostly provided clarification. Amendment #1 clarified language in the

title. **SEN. GROSFIELD** said amendment #2 clarified the process of providing the statement of rights by adding the language, "by certified mail at any time, but no later than 5 days after filing the complaint, as provided in 70-30-202". Amendment #3 clarified the rights provided in the statement were the condemnee's rights. Amendment #4 clarified the person signing the statement of rights would be the condemnor. Amendment #5 removed the language, "but is not limited to", which raised concerns the language was unclear for interpretation, which could lead to increased litigation. Amendment #6 then clarified the information to be included in the statement of rights by adding on page 2, line 3, that the "full text of" Article II, section 29, of the Montana constitution be provided. Amendment #7 clarified page 2, line 6, that additional documents referred to were "by either party". Amendment #8 again clarified the rights referred to were those of the condemnee. Amendment #9 replaced language with "mailed" to confirm the change from amendment #2, and amendments #10 and #11 again followed with additional language replacement.

Voice Vote: The motion that **AMENDMENTS (HB042001.AMV) TO HB 420 BE ADOPTED** carried unanimously. Vote was 8-0.

Motion: **SEN. VICKI COCCHIARELLA** moved that **HB 420 BE CONCURRED IN AS AMENDED**.

Discussion: **SEN. COCCHIARELLA** asked **SEN. BEA MCCARTHY** if she served on the Environmental Quality Council (EQC) subcommittee and how this issue was dealt with there. **SEN. MCCARTHY** responded she sat on the EQC Eminent Domain Subcommittee, chaired by **SEN. MACK COLE**, but only heard this bill before the full EQC. She reported the full committee did not recommend any bills be drafted on the issue though it was noted changes needed to be made. **SEN. BILL TASH** stated he could not support the bill, even with **SEN. GROSFIELD'S** amendments adopted, because he had gone through the condemnation process individually and understood the intimidation a condemnee could experience, and did not agree with this approach. As he served on the EQC, four bills were brought forth from deliberations and advice from subcommittees through the full committee and the principal piece of legislation suggested to utilize an advisory pamphlet drawn from the MDT's example; used to properly advise people regarding eminent domain or right-of-way acquisitions. During his condemnation experience, the MDT advised him of his individual rights and to seek counsel should he feel the need, which he did. He said he was well-served with the process and, therefore, would not support **HB 420**, as he just felt it was not needed. **CHAIRMAN BILL CRISMORE** said he had served on the EQC's Eminent Domain Subcommittee and the MEPA Subcommittee. He said all bills the EQC adopted and sponsored had been passed and they felt there was

no need for any others. **SEN. COCCHIARELLA** expressed concern with the bill being unclear regarding who it would apply to. She also was concerned that the state was "mandating" those entities to follow this particular public relations action and questioned the outcome of this type of approach. **SEN. MCCARTHY** said she agreed with **SEN. COCCHIARELLA** and **SEN. TASH** that this was not needed and felt it would "muddy the water".

Roll Call Vote: The motion that **HB 420 BE CONCURRED IN AS AMENDED** failed 4-6 with Grosfield, Roush, Taylor, and Toole (proxy vote) voting aye.

Motion/Voice Vote: **SEN. TASH** moved that **HB 420 BE TABLED**. Motion carried 7-2 with Roush and Toole (proxy vote) voting no.

{Tape: 1; Side: A; Approx. Time Counter: 0-20.5}

EXECUTIVE ACTION ON HB 69

Motion: **SEN. BEA MCCARTHY** moved that **HB 69 BE CONCURRED IN**.

Discussion: **SEN. MCCARTHY** recalled the many separate sets of amendments brought forth at the hearing and asked if those amendments were blended into one set or were there several sets. **CHAIRMAN BILL CRISMORE** stated we would only be addressing the amendments that had been brought forth and prepared for action via legislative staffer **Larry Mitchell**. After those were offered, if other amendments were needed, that issue would be discussed and considered. **SEN. LORENTS GROSFIELD** reminded the committee that this bill would have to pass committee and be on the floor yet today, like in an hour, to meet the transmittal deadline. **CHAIRMAN CRISMORE** offered his amendments, **HB006913.alm** as **EXHIBIT(nas80a02)**. **Larry Mitchell**, legislative staff, explained amendments **HB006913.alm** did basically three things. Amendments #1 through #8 restored existing language in terms of when a person may get an exploration license or an operating permit. Amendments #9 through #13, addressed some language changes on page 18 of the bill and inserted a section regarding the selection process for third-party contractors. On page 19, language was inserted regarding bond calculations. On pages 24 and 25, amendments #14 and #15 would strike section 9 in its entirety and renumber the subsequent sections. **SEN. GROSFIELD** noted three concepts, amendments #1 through #8, #9 through #13, and #14 and #15. *{End of Tape: 1; Side: A}* Referencing #1 through #8 regarding the "bad actor" provision, **SEN. GROSFIELD** stated the DEQ wanted some ability to encourage people not to be bad actors and the "strike one and you're out" was a strong enticement

versus the "pay all your bills and you're in". **SEN. GROSFIELD** thought there could be some middle ground approach established that not only required payment of all bills but allowed the DEQ the ability to decide to give the applicant another chance if the applicant had changed their ways; remedied the reasons for the former bond forfeiture, demonstrated change, had the financial capability to go ahead and operate and accomplish reclamation within the new permit. **SEN. GROSFIELD** offered his amendments, **HB006917.alm** as **EXHIBIT(nas80a03)**. It was explained that **SEN. GROSFIELD'S** amendments were similar to amendments #1 through #8 and #14 and #15 of **CHAIRMAN CRISMORE'S** amendments, **HB006913.alm** with the difference involving the portions of the bill that #9 through #13 addressed.

Motion: **SEN. GROSFIELD** moved that **AMENDMENTS TO HB 69 (HB006917.alm) BE ADOPTED.**

Discussion: **SEN. MIKE TAYLOR** raised some concern over a "bad actor" who had forfeited bond and forced the state to assume responsibility for completing reclamation including the associated costs and then being able to come back, pay back the state, and operate once again in Montana. **Jan Sensibaugh, Director, Montana Department of Environmental Quality (DEQ),** stated that after the party had reimbursed the state with all costs from the past operation, the DEQ would have to be comfortable the party was capitalized enough to gain approval to move forward with mining.

Voice Vote: The motion that **AMENDMENTS TO HB 69 (HB006917.alm) BE ADOPTED** carried unanimously. Vote was 8-0.

Motion: **SEN. GROSFIELD** moved that **AMENDMENTS TO HB 69 (ONLY #9 THROUGH #13 OF HB006913.alm) BE ADOPTED.**

Discussion: **SEN. VICKI COCCHIARELLA** suggested that in the future the Board of Investments be considered as a resource consultant with their proven expertise with bonding. **SEN. GROSFIELD** did not entirely disagree but thought **HB 69** and other related bills that recently passed went a long way toward increasing the bonding wealth. **SEN. MCCARTHY** recalled that quite a bit of testimony at the hearing was directed at small miners and asked if the small miner would be exempted from **HB 69** from the adoption of these amendments. **Mr. Mitchell** confirmed that was correct.

Voice Vote: The motion that **AMENDMENTS TO HB 69 (ONLY #9 THROUGH #13 OF HB006913.ALM) BE ADOPTED** carried unanimously. Vote was 8-0.

SEN. GROSFIELD offered his amendments **HB006915.alm**, **EXHIBIT (nas80a04)**, regarding the applicability date in relation to the changes just adopted and asked **legislative staff, Mary Vandebosch** and **Larry Mitchell** if this was still needed as he did not want a current permittee today that defaulted a decade ago to forego the effects of **HB 69**. **Mr. Mitchell** did not believe it was necessary with the same language retained now as in existing statutes and the issue would be whether or not the legislature desired to require the proof of past bond forfeitures. **SEN. GROSFIELD** said he wanted this to be "prospective" and asked the DEQ if, in passing the amendments regarding the applicability date, the department would be placed in a position to have to rule on some current permit or revoke a permit based on some past "bad actor" activity of the permittee. **John North, Chief Legal Counsel, DEQ**, responded no current permit or permittee would be jeopardized by this language and he concurred with **Larry Mitchell** that it depended upon whether the legislature wanted the additional showing to be prospective only. He suspected the DEQ, under the Hard-Rock Mining Act, in the last ten or fifteen years, might have revoked around five to ten bonds. **SEN. GROSFIELD** determined he did not wish for the amendments, **HB006915.alm**, to be used today. **SEN. GROSFIELD** offered his amendments, **HB006914.alm** as **EXHIBIT (nas80a05)**.

Motion: **SEN. GROSFIELD** moved that **AMENDMENTS TO HB 69 (HB006914.alm)** BE ADOPTED.

Discussion: **SEN. GROSFIELD** explained **HB006914.alm** was a combination of some amendments discussed around the hearing including those brought forward by **Leo Berry** who represented the surety, **National Fire Insurance Company of Hartford**. To understand the "compromise" amendment #2, refer to page 18, line 14, where the following language would be inserted, "The mine owner is responsible for the first \$5,000 in contractor services provided under this subsection. The mine owner and the department are each responsible for 50% of any amount over \$5,000". At the hearing, the suggestion arose that the third-party contractor be selected, directed, and compensated by the department versus the current language that just said the contractor would be "selected", generally, by the applicant and the DEQ and compensated by the applicant. **SEN. GROSFIELD** said, in most cases, the mine owner requested the third-party so they would pay the first \$5,000 and then any amount over \$5,000 would be split 50% with the DEQ. He added he understood most contractors would cost under \$5,000 with some costing up to \$20,000 or so. Amendment #4 was minor and replaced the word "discuss" with "negotiate". **SEN. GROSFIELD** said amendment #5 deleted the provision of a 30-day public comment period, on page

18, line 28. Amendment #6 stated the DEQ had 30 days for determination of the bond amount and the permittee shall post full bond with the DEQ no later than 30 days after issuance, "Unless the licensee or permittee requests a hearing...". Amendments #7 and #8 adjusted language on page 19, lines 1 and 2. Amendment #9 provided clarity in that the word "reasonable" on page 19, line 3, would be stricken and replaced with a "30-day" extension of the deadline if the permittee demonstrated through the exercise of reasonable diligence they were unable to post the bond within 30 days. Amendment #10 and #11 regarded the calculation and submittal of a bond, page 19, particularly regarding an adjusted bond that was increased by the DEQ's determination it was inadequate after a mine had been permitted. Amendment #10 stated, unless the applicant requested a hearing on the amount, the full bond was required to be posted with the DEQ within 30 days. If the applicant requested a hearing before the board, the applicant must specify the amount of bond increase considered appropriate and state the reasons they felt the final bond determination was excessive. If the bond amount was not agreed upon by the applicant, amendment #11 helped describe the process; the applicant would be required to post the portion the applicant stated was considered appropriate in the request for hearing or the amount that was one-half of the increase contained in the department's final bond determination, whichever amount was greater. The hearing would then address the additional balance and, in that manner, the DEQ would get at least a portion of the increase up front. If the permittee failed to post the required amount by the deadlines, the permit would be suspended and the permittee should immediately cease mining and exploration operations until the required bond was posted with and approved by the DEQ. **SEN. TAYLOR** asked the DEQ to comment on the process proposed. **Director Sensibaugh** explained the DEQ followed a list of bond components to consider when calculating a bond amount. Often times, when the DEQ presented the proposed bond calculation to the company, discussion occurred over specific calculations with the company in agreement and disagreement with some of the calculations. She said if the final bond amount could not be negotiated or agreed upon, this proposal allowed the DEQ to collect the amount agreed upon or 50% of the increase, whichever was more, allowing the DEQ some adequate coverage while going through the appeal process. She added the DEQ was comfortable with the process in amendment **HB006914.alm**. **SEN. TAYLOR** asked what the normal cost for a third-party contractor was. **Director Sensibaugh** felt \$5,000 was probably adequate to cover the task contracted which basically just involved sitting down with the mine owners and the DEQ and objectively come to terms with the amounts. **{End of Tape: 1; Side: B}**

SEN. TASH asked if the mining industry felt the proposal was a reasonable approach to negotiate the terms and conditions of the

bond amount. **Angela Janacaro**, representing the **Montana Mining Association**, responded it was. **SEN. GROSFIELD** went on to explain amendments #12, #13, and #16 related to the surety issue. **Larry Mitchell** stated amendment #14 was a correction. **SEN. GROSFIELD** stated amendment #15 needed review and asked the DEQ to comment on it. **John North** explained #15 applied to the situation in which the DEQ had forfeited the bond due to a default by the mining company. The current bill had language in it that said the DEQ was supposed to use the bond money to implement reclamation in accordance with the reclamation plan. When **HB 69** was in the House in subcommittee, the DEQ negotiated with the bonding companies for the ability to amend the reclamation plan while the mine was operating if, at the time of bond forfeiture, it appeared the reclamation plan would result in a violation of air and water quality laws or if there was some substantial failure of reclamation.

Substitute Motion/Voice Vote: **SEN. GROSFIELD** made a substitute motion that **AMENDMENTS (HB006914.alm) TO HB 69 BE ADOPTED EXCLUDING AMENDMENT #15. Substitute motion carried unanimously. Vote was 8-0.**

Larry Mitchell reported he drafted a couple of amendments for **SEN. KEN TOOLE** though no direction was given to act on those. **SEN. GROSFIELD** noted the transmittal deadline today and affirmed **SEN. TOOLE** could offer his amendments on the Senate floor. **CHAIRMAN CRISMORE** confirmed there were no additional amendments offered at this time.

Motion/Roll Call Vote: **SEN. GROSFIELD** moved that **HB 69 BE CONCURRED IN AS AMENDED** with **HB006919.alm**, **EXHIBIT(nas80a06)** which combined adopted amendments. **Motion carried 9-2 with Miller and Taylor voting no.** **SEN. PRES. TOM BECK** will carry **HB 69** on the Senate floor. **{Tape: 2; Side: A; Approx. Time Counter: 0-9.1}**

HB 513

SEN. KEN MILLER asked if there was any will to move or reconsider **HB 513** which eliminated nitrate testing for single family residences, as there were some amendments offered. It was discussed that **HB 513** had missed the transmittal deadline for general bills and the possible application of suspension rules was also discussed in regards to amendments placed on it.

HB 421

SEN. KEN MILLER asked if there was any will for reconsideration of **HB 421** which proposed that condemned property only be used for the purpose noted in the final condemnation order. **SEN. MIKE TAYLOR** was unaware of any support but thought industry was probably against it. He added there was definitely some concern from ranchers regarding **HB 421**. **CHAIRMAN BILL CRISMORE** understood the actions of **HB 421** could not be done under present law. **SEN. BEA MCCARTHY** added that **HB 421** was discussed in the Environmental Quality Council's Eminent Domain Subcommittee chaired by **SEN. MACK COLE**. **SEN. COLE** stated the conclusion from the EQC was that the state had all the tools it needed to address the issue and turned it down also. *{Tape: 2; Side: A; 9.1-13.7}*

ADJOURNMENT

Adjournment: 2:40 P.M.

SEN. WILLIAM CRISMORE, Chairman

NANCY BLECK, Secretary

WC/NB

EXHIBIT (nas80aad)